IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 21ST NOVEMBER 2006 / 30TH KARTHIKA 1928

Crl.MC.No. 3850 of 2003()

(C.C.NO.450/98 OF THE JFCM-II, HOSDURG)

PETITIONER: ACCUSED NO.3 IN C.C.NO.450/98:

MAJEED @ DARHAM MAJEED,
AGED 35 YEARS, S/O. ABDULRAHIMAN, KANDATHIL HOUSE
NEAR RAILWAY STATION, KALANAD, KIZHOOR,
KALANAD VILLAGE, KASARAGOD DISTRICT.

BY ADV. SRI.M.SASINDRAN
SRI.K.P.HARISH

RESPONDENTS: COMPLAINANT:

STATE - REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 21/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.A 5406/2003 IN CRL.M.C.3850/2003

DISMISSED.

21-11-2006 SD/- K.R.UDAYABHANU, JUDGE.

//TRUE COPY//

K.R. UDAYABHANU, J.

CRL M.C. NO. 3850 of 2003

Dated 21st day of November, 2006

ORDER

The petitioner who is the accused in C.C.No.766/2002 in the file of the Judicial Magistrate of the First Class-II, Hosdurg/split up case from C.C.450/1998 in which he was the 3rd accused with respect to the offences under sections 457, 380, 461, 411 read with 34 IPC has sought for setting aside the proceedings pending against him on the ground that he was not at all connected with the incident. It is submitted that at that time the petitioner was in Bombay in search of employment and right now he is employed in Bombay.

2. The prosecution case is that the accused Nos. 1 to 3 broke open the shelf kept in the bed room of the house of CW2 and committed theft of one watch plated with gold, two ladies watches, a torch etc. 4th accused is the alleged receiver of the stolen property. The petitioner has relied on the judgment of the court below in C.C.No.450/98 as per which the rest of the accused were tried and accused Nos. 1,2 and 4 were acquitted.

3. Counsel for the petitioner has relied on the recitals in the judgment that the entire articles allegedly stolen were shown to PW-2 at the police station as deposed by her whereas two of the items, i.e. gold plated watches have not been produced before the court. It is also pointed out that it is mentioned in the judgment that the finger print of the petitioner/A3 was not found at the scene of occurrence. According to the counsel for the petitioner, the substratum of the allegations have been lost in view of the judgment of the court below acquitting the rest of the accused.

4. I find that the relevance of the judgment in the trial of the co-accused in C.C.No.450/98 is confined to the fact of prosecution and as to the finding that the above persons have been acquitted vide Moosa v. S.I. Of Police (2006(1) KLT 552) (FB). It is also to be noted that the incident has taken place on 12-7-97. Evidently, so far, the petitioner/A3 has been absconding.

5.In the circumstances, I find no reason to quash the proceedings pending against the petitioner. Considering the plea of the counsel, the petitioner is directed to surrender

before the court below within two weeks from today onwards and apply for bail. No pre trial detention is warranted. The petitioner shall cooperate with the trial. The court below shall dispose of the application on the same day itself, as far as possible.

The Crl.M.C. is disposed of as above.

K.R.UDAYABHANU,JUDGE.

kvm/-

K.R. UDAYABHANU, J.

CRL.M.C.NO.3850/2003

ORDER

21-11-2006.